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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

JESS TAPIA
1517 Sampson Street
Marysville, CA 95901

Respiratory Care Practitioner License No. 13165

Respondent.

Case No. R-2097

**FIRST
AMENDED
ACCUSATION**

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about December 3, 1989, the Respiratory Care Board issued Respiratory Care Practitioner License Number 13165 to Jess Tapia (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2009, unless renewed.

JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 3710 of the Code states: “The Respiratory Care Board of
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
4 8.3, the Respiratory Care Practice Act].”

5 5. Section 3718 of the Code states: “The board shall issue, deny, suspend,
6 and revoke licenses to practice respiratory care as provided in this chapter.”

7 6. Section 3750 of the Code states:

8 “The board may order the denial, suspension or revocation of, or the imposition of
9 probationary conditions upon, a license issued under this chapter, for any of the following
10 causes:

11 “(b) Fraud in the procurement of any license under this chapter.”

12 “(d) Conviction of a crime that substantially relates to the qualifications,
13 functions, or duties of a respiratory care practitioner. The record of conviction or a
14 certified copy thereof shall be conclusive evidence of the conviction.”

15 “(g) Conviction of a violation of any of the provisions of this chapter or of any
16 provision of Division 2 (commencing with Section 500), or violating, or attempting to
17 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
18 violate any provision or term of this chapter or of any provision of Division 2
19 (commencing with Section 500).”

20 “(j) The commission of any fraudulent, dishonest or corrupt act which is
21 substantially related to the qualifications, functions or duties of a respiratory care
22 practitioner.”

23 7. Section 3750.51 of the Code states:

24 “(b) An accusation filed against a licensee pursuant to Section 11503 of the
25 Government Code alleging the procurement of a license by fraud or misrepresentation is
26 not subject to the limitations set forth in subdivision (a).”

27 8. Section 3752 of the Code states:

28 “A plea or verdict of guilty or a conviction following a plea of nolo contendere

1 made to a charge of any offense which substantially relates to the qualifications,
2 functions, or duties of a respiratory care practitioner is deemed to be a conviction within
3 the meaning of this article. The board shall order the license suspended or revoked, or
4 may decline to issue a license, when the time for appeal has elapsed, or the judgment of
5 conviction has been affirmed on appeal or when an order granting probation is made
6 suspending the imposition of sentence, irrespective of a subsequent order under Section
7 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to
8 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
9 accusation, information, or indictment.”

10 9. California Code of Regulations, title 16, section 1399.370, states:

11 “For the purposes of denial, suspension, or revocation of a license, a crime or act
12 shall be considered to be substantially related to the qualifications, functions or duties of
13 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
14 perform the functions authorized by his or her license or in a manner inconsistent with the
15 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
16 those involving the following:

17 “(a) violating or attempting to violate, directly or indirectly, or assisting or
18 abetting the violation of or conspiring to violate any provision or term of the Act.”

19 “(c) Conviction of a crime involving driving under the influence or reckless
20 driving while under the influence.”

21 COST RECOVERY

22 10. Section 3753.5, subdivision (a) of the Code states:

23 "In any order issued in resolution of a disciplinary proceeding before the board,
24 the board or the administrative law judge may direct any practitioner or applicant found to have
25 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
26 investigation and prosecution of the case."

27 11. Section 3753.7 of the Code states:

28 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall

1 include attorney general or other prosecuting attorney fees, expert witness fees, and other
2 administrative, filing, and service fees."

3 12. Section 3753.1 of the Code states:

4 "(a) An administrative disciplinary decision imposing terms of probation may
5 include, among other things, a requirement that the licensee-probationer pay the monetary costs
6 associated with monitoring the probation. "

7 FIRST CAUSE FOR DISCIPLINE

8 (Conviction)

9 13. Respondent is subject to disciplinary action under code sections 3750(d)
10 and (g), 3752 and CCR 1399.370(a) and (c) in that he was convicted of driving under the
11 influence of alcohol. The circumstances are as follows:

12 14. On or about July 20, 2006, California Highway Patrol Officer G. Carpenter
13 observed respondent driving his vehicle northbound on State Route 70. Respondent's vehicle
14 was weaving within the lane, and crossed over the lane divider and drifted into the shoulder of
15 the lane. Officer Carpenter stopped the vehicle, and informed respondent of the reason for the
16 stop. The officer detected the odor of an alcoholic beverage from respondent, and observed that
17 respondent's eyes were bloodshot and watery. He asked to see respondent's license. He asked
18 respondent to exit the vehicle and walk towards the right front of it. Respondent appeared
19 unsteady on his feet. When he spoke, his speech was slurred. Respondent admitted drinking two
20 glasses of wine. Respondent was asked to perform field sobriety tests. Based on his poor
21 performance on the tests, his objective signs of alcohol intoxication, and his driving, Officer
22 Carpenter arrested respondent for driving while under the influence of alcohol in violation of
23 Vehicle Code section 23152(a). Respondent was taken to Rideout Hospital for a blood test. A
24 forensic alcohol analysis was performed, and the blood sample contained .14% alcohol.

25 15. On or about July 28, 2006, a criminal complaint titled *People of the State*
26 *of California vs. Jess Tapia*, case no. TR-06-00821 was filed in Superior Court, Yuba County.
27 Count 1 charged respondent with a violation of Vehicle Code section 23152(a), driving while
28 under the influence of alcohol. A prior conviction for Vehicle Code section 23152(a) on October

1, 1997 was alleged. Count 2 charged respondent with a violation of Vehicle Code section 23152(b), driving with a blood alcohol level of .08% or more.

16. On or about October 16, 2006, respondent was convicted on his plea of no contest to Count 2, Vehicle Code section 23152(b), driving with a blood alcohol level of .08% or more and admitted the prior conviction. Count 1 was dismissed. Respondent was sentenced to three years summary probation, ordered to serve 48 hours in jail and allowed to serve consecutive weekends. He was ordered to enroll within 21 days, attend and complete an 18 month program and provide proof of enrollment in Butte County, his county of residence, by November 17, 2006.

17. Therefore, respondent's license is subject to discipline based on his conviction of violating Vehicle Code section 23152(b), driving with a blood alcohol level of .08% or more, which is substantially related to the practice of respiratory care.

MATTER IN AGGRAVATION

18. On or about October 1, 1997, respondent was convicted on his plea of nolo contendere to violating Vehicle Code section 23152(a), driving while under the influence of alcohol, a misdemeanor. He was sentenced to three years summary probation, ordered to pay fines, complete sixteen hours of community service in lieu of forty eight hours in county jail, and enroll in DUI school within twenty one days and complete within six months.

SECOND CAUSE FOR DISCIPLINE

(Obtaining a License by Misrepresentation; Dishonest Act)

19. On or about July 14, 1999, respondent completed a license renewal application. The application asks, "Since you last renewed your license, have you been convicted of or pled nolo contendere to any violation of any law of any state, the United States or a foreign country? You must disclose all misdemeanors and felonies including but not limited to civil, welfare, health and safety, vehicle or penal code convictions and any conviction which has been dismissed pursuant to Penal Code section 1203.4 of the Penal Code." Respondent checked the box next to "No," and signed the application under penalty of perjury.

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20. However, at the time respondent completed the license application, he was aware that on October 1, 1997, he was convicted on his plea of nolo contendere to violating Vehicle Code section 23152(a), driving while under the influence of alcohol, a misdemeanor.

21. On or about August 6, 2007, respondent completed a license renewal application. He answered “No” to the question asking whether he had any convictions since the time of his last renewal, and signed the application under penalty of perjury.

22. However, at the time respondent completed the application, he was aware that on October 16, 2006, he was convicted on his plea of no contest to violating Vehicle Code section 23152(b), driving with a blood alcohol level of .08% or more.

23. Therefore, respondent's license is subject to discipline pursuant to code sections 3750(b) [obtaining a license by misrepresentation] and 3750(j) [dishonest act] in that he failed to disclose his 1997 and 2006 convictions when specifically asked in the license renewal application.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Revoking or suspending Respiratory Care Practitioner License Number 13165, issued to Jess Tapia.

2. Ordering Jess Tapia to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;

3. Taking such other and further action as deemed necessary and proper.

DATED: September 28, 2007

Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant